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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,545	12/29/2003	Mark L. Doczy	P18245	9131

7590 11/15/2005  
Michael A. Bernadicou  
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Seventh Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025

EXAMINER
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NGUYEN, THANH T

ART UNIT	PAPER NUMBER
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2813

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

4A

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,545	<b>Applicant(s)</b> DOCZY ET AL.	
	<b>Examiner</b> Thanh T. Nguyen	<b>Art Unit</b> 2813	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) 4-6, 12-14 and 16-20 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3, 7-11 and 15 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>see OA</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of specie I, claims 1-3, 7-10, 11, 15 in the reply filed on 8/1/05 is acknowledged.

### ***Information Disclosure Statement***

● The information disclosure statement filed on 4/8/05; 12/21/04; 9/27/04; 9/20/04; 6/1/04; 12/29/03 has been considered.

### ***Oath/Declaration***

Oath/Declaration filed on 12/29/03 has been considered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

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patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Barns (U.S. Patent No. 6,743,683).

Referring to figures 1-19, Barn teaches a method for making a semiconductor device comprising:

forming a patterned sacrificial gate electrode layer (18) that is covered by a hard mask (50, silicon nitride), that is covered by an etch stop layer (52, oxide, see figure 10, col. 2, lines 38-67, Noted that the same material have the same function),

forming first and second spacers (24/26) on opposite sides of the patterned sacrificial gate electrode layer (18, see figure 6),

removing the patterned sacrificial gate electrode layer (18, see figure 13, col. 3, lines 21-28) to generate a trench that is positioned between the first and second spacers, and

filling at least pad of the trench with a metal layer (80, see figure 16, col. 3, lines 35-40).

Regarding to claim 2, the patterned sacrificial electrode layer (18) is formed on a patterned first dielectric layer (12) that is formed on a substrate (10), and further comprising forming source and drain regions (32/34) that comprise a silicide (42) next to the first and second spacers (24/26) (see figure 9-10, col. 2, lines 24-37), and forming a second dielectric layer (90) on the etch stop layer (52) and the substrate (10). Noted that the TiN (titanium nitride) layer is capable to use as dielectric or conductive (see reference Bhat et al. 2005/0032325). **In re Tuominen, 213 USPQ 89 (CCPA 1982) & In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974).**

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Regarding to claim 7, the metal layer comprises a material that is selected from the group consisting of hafnium, zirconium, titanium, tantalum, aluminum, a metal carbide, ruthenium, palladium, platinum, cobalt, nickel, and a conductive metal oxide (see col. 4, lines 30-33).

Regarding to claim 8, the metal layer comprises a material that is selected from the group consisting of hafnium, zirconium, titanium, tantalum, aluminum, and a metal carbide, (see col. 4, lines 30-33) and has a workfunction that is between about 3.9 eV and about 4.2 eV. Noted that aluminum or titanium layer has the workfunction of between about 3.9 eV and about 4.2 eV.

Regarding to claim 9, the metal layer comprises a material that is selected from the group consisting of ruthenium, palladium, platinum, cobalt, nickel, and a conductive metal oxide (see col. 4, lines 30-33), and has a workfunction that is between about 4.9 eV and about 5.2 eV.

Noted that ruthenium layer has the workfunction of between about 4.9 eV and about 5.2 eV.

Noted that it is inherent that each conductive film has its own work function. Hence, the same material would provide the same workfunction. See In re Best, 195 USPQ 428 (CCPA 1977) and In re Fitzgerald, 205 USPQ 594 (CCPA 1980).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 7-10, 11, 15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/739173 and 10/742678. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims and the copending claims teach a method of forming a MOSFET by forming a multiple sacrificial layers and remove the layers to form the trench then depositing the metal layer in the trench to form the metal gate structure.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh Nguyen whose telephone number is (571) 272-1695, or by Email via address Thanh.Nguyen@uspto.gov. The examiner can normally be reached on Monday-Thursday from 6:00AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead, can be reached on (571) 272-1702. The fax phone number for this Group is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956 (See **MPEP 203.08**).

A handwritten signature in black ink, appearing to read 'Thanh', with a long horizontal stroke extending to the left.

Thanh Nguyen  
Patent Examiner  
Patent Examining Group 2800

TTN